UNITED
NATIONS

A

General Assembly

Distr.
LIMITED

A/AC.105/C.2/L.187
22 January 1992

ORIGINAL: ENGLISH

COMMITTEE ON THE PEACEFUL USES OF
OUTER SPACE
Legal Subcommittee
Thirty-first session
Geneva, 23 March-10 April 1992
Agenda item 5

CONSIDERATION OF THE LEGAL ASPECTS RELATED TO THE APPLICATION OF THE PRINCIPLE THAT THE EXPLORATION AND UTILIZATION OF OUTER SPACE SHOULD BE CARRIED OUT FOR THE BENEFIT AND IN THE INTERESTS OF ALL STATES, TAKING INTO PARTICULAR ACCOUNT THE NEEDS OF DEVELOPING COUNTRIES

Paper of the Chairman of the Working Group on agenda item 5

INTRODUCTION

1. Since its twenty-seventh session in 1988, the Legal Subcommittee of the Committee on the Peaceful Uses of Outer Space has been discussing the item entitled "Consideration of the legal aspects related to the application of the principle that the exploration and utilization of outer space should be carried out for the benefit and in the interests of all States, taking into particular account the needs of developing countries".

2. On 26 September 1988 and on 20 December 1989, respectively, the Secretary-General addressed a note verbale to the permanent representatives of Member States to the United Nations, inviting their Governments: (a) to submit their views as to the priority of specific subjects under the above item; (b) to provide information on their national legal frameworks, if any, relating to the development of the application of the principle contained in article 1 of the 1967 Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies (1988 note verbale); and (c) to submit their views on the subject of international agreements that member States have entered into that are relevant to the principle that the exploration and use of outer space shall be carried out for the benefit and in the interests of all countries, taking into account the needs of developing countries (1989 note verbale).

The requests contained in these notes were reissued on 6 and 10 July 1990 respectively.

3. Thirty States have sent their responses to the Secretary-General. Those responses are published in documents A/AC.105/C.2/15 and Add.1-13; and A/AC.105/C.2/16 and Add.1-10. While several States responded to both of the above-mentioned notes, others responded only to the first or second. It should be mentioned, however, that some responses to the 1988 note verbale also contained views and information pertaining to the subject-matter of the 1989 note verbale, and vice versa.

4. At the thirtieth session of the Legal Subcommittee, in 1991, the Working Group on agenda item 5 requested its Chairman to prepare, for the next session of the Subcommittee, in 1992, a paper summarizing in an analytical manner the views and information contained in the responses of Member States to the two above-mentioned notes verbales of the Secretary-General (see A/AC.105/484, annex III, para. 22). The following is the Chairman's response to that request.

I. PRIORITY OF SPECIFIC SUBJECTS

5. A wide variety of views on this issue were expressed in the responses received by the Secretary-General. According to some of them, the Legal Subcommittee should start its work on the new item with an analysis of the principle contained in article I of the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies (Outer Space Treaty), and should, in particular, consider the question of defining or interpreting certain basic terms, such as "for the benefit and in the interests", "the province of all mankind", "resources to be shared", "space-oriented" versus "Earth-oriented" activities, "use of outer space", "use of objects in outer space" and others.

6. According to other views, the Subcommittee should first review and analyse information received from States on national legal frameworks, still very rare, relating to the peaceful exploration and use of outer space, and also at an early stage consider similar information concerning international agreements that are relevant to the principle contained in article I of the Outer Space Treaty, and, finally, analyse in detail the results of the Subcommittee's review of those subjects, draw conclusions about the application of article I at the national and international levels, perhaps in a factual report on the subject, including a determination as to whether this item should continue to be considered or be dropped from the Subcommittee's agenda.

7. Some responses suggested that the Subcommittee should concentrate its efforts on establishing appropriate institutional machinery for exercising mankind's rights in the outer space sphere, that more specific regulation of the right of all States, especially developing countries, to just and equitable access to the benefits derived from outer space activities were

required and that, therefore, the Subcommittee should commence the elaboration of supplementary legal norms for this purpose. Some States indicated that the purpose of such elaboration should be to further develop and strengthen the principle of international cooperation in the outer space field. Such norms, as mentioned in some responses, could include, along with those indicated above, specific rules for ensuring that the use and exploration of outer space should be carried out exclusively for peaceful purposes and for the benefit and in the interests of all peoples; means of ensuring free exploration and use of outer space without any kind of discrimination, based on equality and in conformity with the norms and principles of international law; ways of guaranteeing freedom of scientific investigation while promoting international cooperation with countries less advanced in that area; protection of the rights of countries which have little or no space capability to participate fully, and on an equitable basis, in the exploration and utilization of outer space; ways to allow access to final products of a space activity to developing countries on a preferential and non-strictly commercial basis; rules encouraging transfer, on an adequate basis, of the relevant space-related capabilities (e.g., through the training of staff) to developing countries.

8. Some replies contained the view that the formulation of the new item of the Subcommittee's agenda was broad enough to allow the consideration of the legal aspects of the space environment's protection, including, in particular, the legal aspects of dealing with the space debris problem.

9. Some responses stressed the need to prevent the militarizing of outer space and to achieve progress in the Subcommittee's consideration of the questions relating to delimitation of outer space and airspace, as well as to the character and utilization of the geostationary orbit.

10. It would seem safe to say that all respondents agree that the main, and perhaps the most practical and promising way of realizing the principle contained in the first sentence of article I of the Outer Space Treaty, is by further developing international cooperation in the exploration and peaceful uses of outer space.

11. Some responses suggest that, in order to reach that objective, an additional international legal framework is needed which would provide specific rules and methods for equitably sharing benefits derived from outer space activities among all States, in particular developing countries.

12. The opposing view implies that, while the existing international legal framework deserves examination, it is generally adequate for further developing international cooperation in the outer space field and should not be supplemented.

13. At the thirtieth session of the Legal Subcommittee, in 1991, Argentina, Brazil, Chile, Mexico, Nigeria, Pakistan, the Philippines, Uruguay and Venezuela submitted a working paper containing "Principles regarding international cooperation in the exploration and utilization of outer space

for peaceful purposes" (A/AC.105/C.2/L.182 of 9 April 1991, reproduced in A/AC.105/484, annex IV, sect. B), and the views expressed in that document need to be considered.

II. NATIONAL LEGAL FRAMEWORKS

14. Of the 30 States which have sent responses to the above notes, very few have indicated in those responses domestic laws which are specifically relevant to the principle contained in article I of the Outer Space Treaty, or, even more generally, regulate national activities in outer space or in connection with outer space. Some States indicated that relevant domestic legislation did not exist.

15. At present only one State seems to have numerous domestic laws, regulations and policies relevant in this regard. Of the laws, as indicated in the relevant response, the most important are: the National Aeronautics and Space Act of 1958, as amended; the Communications Satellite Act of 1962, as amended; the International Maritime Satellite Telecommunications (INMARSAT) Act of 1978; the Commercial Space Launch Act of 1984, as amended; and the Land Remote Sensing (LANDSAT) Commercialization Act of 1984.

16. Two other responses contained references to existing national legal frameworks specifically regulating activities involving the exploration and use of outer space. One of them briefly described a law establishing a national space agency, and also described a National School Establishment Law, under which an inter-university research institute had been established to carry out research and engineering in space science and its applications. The other referred to the Outer Space Act, which regulates that State's national activities in outer space for the purpose of complying with article VI of the Outer Space Treaty and the Convention on Registration of Objects Launched into Outer Space.

17. Some States referred to their Basic Laws (Constitutions) which contain principles, such as cooperation among States, sovereign equality and fulfilment in good faith of international obligations, which those States consider to be directly linked to the principle that the exploration and use of outer space should be carried out for the benefit and in the interests of all countries.

18. Among relevant national laws, the laws regulating sovereignty over airspace were mentioned, which laws, inter alia, exclude the extension of national sovereignty into outer space.

19. Some responses contained references to certain outer space treaties to which responding States were parties, implying that, in the absence of specific domestic legislation, the provisions of those treaties, or the principles contained therein, play the role of national legal frameworks for outer space activities conducted by those States. Some States stated that they had "incorporated" relevant outer space agreements into their national legislations.

20. In summary, it may be said that at present very few States have specific national legal frameworks relating to the development of the application of the principle contained in article I of the Outer Space Treaty, or relating to outer space activities in general. The main explanation for this may be that the exploration and utilization of outer space is still an area of human activity in which as yet still a limited number of States participate directly, in spite of the fact that all mankind is directly concerned in the results.

21. On the other hand, it seems justified to say that national legislation relating to outer space is more developed in those States where the private sector is conducting or planning to conduct outer space activities.

22. Existing national legal frameworks for outer space activities emphasize international cooperation as the main instrument for involving foreign States in those activities and thus sharing outer space benefits with them.

III. INTERNATIONAL AGREEMENTS

23. Most of the responses to the Secretary-General's note on that subject contained lists of agreements, both bilateral and multilateral, to which a relevant responding State was a party. Some States indicated that several of those bilateral treaties reflected cooperation between developed and developing countries.

24. Some responses briefly described the main and more important provisions of such agreements, as well as specific areas, forms and methods of international cooperation on the basis of those agreements.

25. In this connection, reference was also made to some General Assembly resolutions adopted by consensus, e.g., the 1986 Principles Relating to Remote Sensing of the Earth from Outer Space (resolution 41/65, annex), which, while not creating binding legal obligations, emphasize international cooperation and establish goals and objectives for the peaceful exploration and use of outer space. The said resolutions may develop into a customary practice.

26. Some States examined the basic concepts which, in their view, were the bases for certain provisions of some outer space agreements and offered their interpretations of such notions as "for the benefit of mankind", "province of all mankind", "common heritage of mankind" and others. In this connection it was stated, in particular, that the provisions of article I of the Outer Space Treaty had acquired the legal status of peremptory norms of international law or jus cogens, and created the obligation to share resources and the results of technological research, so that interests, values and needs of a civilized community can be properly satisfied.

27. Some responses suggested that the principle of "international cooperation", reflected in article IX of the Outer Space Treaty and in the report of the Second United Nations Conference on the Exploration and Peaceful

Uses of Outer Space (UNISPACE 82) (A/CONF.101/10 and Corr.1 and 2), should be developed with due regard to legal aspects that may serve as guidelines on how all countries could have access to outer space benefits. In this connection it was proposed, in particular, to examine such concepts as "resources to be shared", "benefits" and "interests", as well as to analyse mechanisms and means for the equitable distribution of the benefits derived from the exploration and use of outer space.

28. In general, it may be said that many agreements on a wide variety of subjects were being viewed by different responding States as relevant to the principle that the exploration and use of outer space should be carried out for the benefit and in the interests of all countries, taking into particular account the needs of developing countries.

29. While some responses were limited to listing and/or briefly describing relevant agreements, other responses contained suggestions aimed at developing new legal provisions and instruments with a view to evolving international institutional methods, machinery or procedures to ensure adequate compliance with the principle contained in article I of the Outer Space Treaty.